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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

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| PACIFIC GAS & ELECTRIC COMPANY,<br>Plaintiff and Respondent,<br>v.<br>MICHAEL L. BALHORN et al.,<br>Defendants and Appellants. | A103405<br><br>(Alameda County<br>Super. Ct. No. V-020872-5) |

Michael Balhorn and Rita Balhorn (the Balhorns) appeal the trial court's grant of summary judgment in favor of Pacific Gas & Electric Company (PG&E), in PG&E's action to, inter alia, enforce an easement for overhead electric transmission wires. On appeal, the Balhorns contend the trial court erred in granting summary judgment in PG&E's favor because triable issues of material fact exist regarding whether (1) the Balhorns' storage shed could be considered a "building or other structure" pursuant to the terms of PG&E's easement, and (2) whether the shed unreasonably interfered with the easement. We shall affirm the judgment.

*FACTUAL AND PROCEDURAL BACKGROUND*

In 1939, PG&E acquired an easement for overhead electric transmission wires from Emmet C. Rittenhouse and others as trustees for The Odd Fellows Home of California, the Balhorns' predecessor in interest. The easement grant deed provided, inter alia, that PG&E shall have ingress and egress rights within the easement area, and "shall avoid unreasonable interference with such use by [the property owners and

successors in interest] as is not inconsistent with the full enjoyment of said rights by [PG&E]; provided, however, that [the property owners and successors in interest] shall not erect or construct, or permit to be erected or constructed, any building or other structure, or drill, or operate any water, or oil, well, within said strip of land."[1]

In 1986, the Balhorns purchased the property, located in Livermore, subject to the utility easements. In 1988, the Balhorns erected a steel storage shed within the easement area for overhead electric transmission wires. In 1990 and again in 2000, they enlarged the shed to its present size of 12 feet by 22 feet and 16 feet by 18 feet, for a total of approximately 550 square feet. The shed has metal framing and metal sides and roof; it sits on a concrete slab. PG&E first expressed concern about the shed in 2000. In 2001, the Balhorns added approximately 25 screw and jack assemblies with wheels to the bottom perimeter of the shed.

On June 29, 2001, PG&E filed an action against the Balhorns, alleging causes of action for enforcement of easement, nuisance, trespass, and declaratory relief. On November 21, 2002, the trial court granted PG&E's motion for summary judgment, after finding that the Balhorns had failed to raise a triable issue of material fact as to "(1) the existence of a valid and enforceable express easement held by plaintiff which prohibits defendants from constructing any building or structure within the easement; and (2) the existence of a structure constructed by defendants which is inconsistent with the rights granted to plaintiff under the easement and which interferes with plaintiff's use and enjoyment of the rights granted under the easement." On May 20, 2003, the trial court entered a judgment in favor of PG&E, in which it enjoined the Balhorns "(a) from interfering in any way with [PG&E's] rights in the easement; (b) to remove the unauthorized building from the easement . . . ; (c) to restore the easement area to its original condition prior to the introduction of any such building or structure; [and]

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[1] In 1942, PG&E acquired a gas pipeline easement from the same grantor and, in 1961, acquired an additional gas pipeline easement from Amelia Garaventa, another predecessor in interest to the Balhorns. The issues in this case, however, involve the electric transmission easement.

(d) from erecting or constructing any building or structure of any kind whatsoever on or about the portion of the subject property that is burdened by [PG&E's] easement."

On July 17, 2003, the Balhorns filed a notice of appeal.

## *DISCUSSION*

### I. *Standard for Summary Judgment and Standard of Review*

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c); see also *Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 843.)

We review a summary judgment ruling de novo to determine whether there is a triable issue as to any material fact and whether the moving party is entitled to judgment as a matter of law. (*Marie Y. v. General Star Indemnity Co* (2003) 110 Cal.App.4th 928, 949.)

### II. *Alleged Triable Issues of Material Fact*

The Balhorns contend there are triable issues of material fact precluding summary judgment in this case. Specifically, they assert that there is a triable issue as to whether the storage shed within the easement area is a "building or other structure" under the terms of the easement. They further argue that, even assuming the shed is a building or structure, there is a triable issue as to whether the shed unreasonably interfered with PG&E's easement.

#### A. *General Law of Easements*

" 'An easement is a restricted right to specific, limited, definable use or activity upon another's property, which right must be *less* than the right of ownership.' [Citation.] In construing an instrument conveying an easement, the rules applicable to the construction of deeds generally apply. If the language is clear and explicit in the conveyance, there is no occasion for the use of parol evidence to show the nature and extent of the rights acquired. [Citations.] If the language is ambiguous, extrinsic evidence may be used as an aid to interpretation unless such evidence imparts a meaning

to which the instrument creating the easement is not reasonably susceptible. [Citation.]" (*Scruby v. Vintage Grapevine, Inc.* (1995) 37 Cal.App.4th 697, 702.)

B. *Whether the Shed Is a Building or Other Structure*

The Balhorns contend there is a triable issue of material fact regarding whether their storage shed constitutes a "building or other structure," under the terms of the easement. The shed, which has been in its present location in various stages of construction since 1988, is 550 square feet in size, consists of walls and a roof, rests on a concrete slab, and is used to hold equipment and building supplies. The Balhorns assert that, despite these characteristics, the shed is not a "building or other structure" because it is not permanent, i.e., the walls have not been secured to the foundation with anchor bolts in conformity with standard building practices and it is now theoretically movable, with the addition of wheels in 2001.

In support of this proposition, the Balhorns cite *Pacific Gas & Elec. Co. v. Hacienda Mobile Home Park* (1975) 45 Cal.App.3d 519, 525 (*Hacienda*), in which a similar easement grant deed prohibited construction of any "building or other structure" in the easement area, and the appellant operated a mobile home park that encroached on the easement area. The appellant argued that the mobile homes were vehicles and therefore not subject to the easement's prohibition. Division Three of this District, however, held that a mobile home or trailer is a building or structure under the terms of the grant of easement, and "[t]o place the mobile home in a fixed location within the easement is to 'erect or construct a building or structure' within the meaning of the grant [of easement] and is thus prohibited." (*Id.* at p. 528.)

In *Hacienda*, the court set forth the following definition of building contained in 12 Corpus Juris Secundum 378-380, Building: " '[I]t has been said that the noun "building" is derived from the Anglo-Saxon "bold," meaning a dwelling . . . that the noun "building" implies the existence of a roof, imports tangibility, and a structure of considerable size and intended to be permanent or at least to endure for a considerable time; and so, while usually the term indicates some sort of edifice or structure located on or affixed to [the] land, it does not necessarily imply that it is fixed to the soil . . . . [¶] It

has been said that "building" in its broad or in its primary sense, refers merely to that which is built . . . . The word has been defined or employed as meaning anything constructed; a thing built; or that which is built; and more specifically as an edifice for any use." (*Hacienda, supra,* 45 Cal.App.3d at p. 527.)[2] The *Hacienda* court also cited several cases that had characterized, for various purposes, a phone booth, a cabin cruiser, a railroad car, and a popcorn stand on wheels as structures. (*Ibid.*, citing cases.)

We conclude, as a matter of law, that the terms "building" and "structure" in the easement grant deed are unambiguous and that the Balhorns' storage shed is a "building or other structure," which the grant deed expressly prohibits. The Balhorns' arguments to the contrary are not persuasive.

First, that their shed does not have utility hookups and was never intended to provide housing, merely reflect the obvious: that the shed is not a mobile home. (See *Hacienda*, *supra*, 45 Cal.App.3d at p. 527, quoting 12 Corpus Juris Secundum 378-380, Building.) Similarly, Mr. Balhorn's statement in his declaration in opposition to PG&E's summary judgment motion, that the shed "was never intended to be a permanent structure," does not alter our conclusion. The shed has been in place, with periodic expansions, since 1988; it has a roof and four walls, sits on a concrete slab, is of a substantial size, and stores building supplies, all of which show that it was built with the expectation that it would remain in place for a considerable period of time. Whether it is permanent or not, it is intended to remain where it is indefinitely. Consequently, the shed meets the definition of "building or other structure." (See *ibid.*)

Moreover, the recent addition of 25 wheels to the bottom of the shed does not serve to transform it from a stationary structure into a vehicle. In his declaration, Mr. Balhorn explained that, in 2001, "I made modifications to the shed by installing

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[2] The Oxford English Dictionary (2d ed. 1989) defines "building" in relevant part as "[t]hat which is built; a structure, edifice . . . ." (*Id.*, vol. II, at p. 631, col. 1.) It defines "structure" in relevant part as "[t]hat which is built or constructed. . . . A building or edifice of any kind, [especially] a pile of building of some considerable size and imposing appearance." (*Id.*, vol. XVI, at p. 959, col. 3.)

assemblies at the bottom of the interior walls. Each one includes a screw and jack assembly with wheels. I added a total of approximately 25 of these devices spaced around the perimeter. Working on a screw jack principle, if they are turned with a wrench, the connected wheels extend down against the underlying surface and this has the effect of lifting the structure off the underlying concrete slab. Once all these assemblies are engaged, the entire shed can be pushed or towed and thereby moved around. In other words, unlike permanent structures, the bottom joists on the building are NOT permanently attached to the underlying concrete slab. Though not as mobile as a trailer, for example, the shed may nevertheless be moved from point to point across my lot."

Mr. Balhorn's statement that the shed theoretically can be moved around within the Balhorns' lot is not sufficient to raise a triable issue of material fact as to whether the shed is a building or structure. (See Code Civ. Proc., § 437c, subd. (p)(1).) Regardless of whether the shed, or any other building or structure for that matter, could perhaps be moved from its usual location, it remains fundamentally a "building or other structure," which the grant deed forbids in the easement area.

Finally**,** the Balhorns assert that even if no ambiguity in the words "building" or "structure" is apparent on the face of the easement grant deed, "a latent ambiguity may be exposed by extrinsic evidence which reveals more than one possible meaning to which the language of the contract is yet reasonably susceptible." (*Wolf v. Superior Court* (2004) 114 Cal.App.4th 1343, 1351.) In his declaration, Mr. Balhorn, a licensed contractor, stated that the shed is as movable as a large recreational trailer that sits next to it in the easement area. He also stated that a neighbor has a large recreational trailer, which appears to be within the easement area. PG&E has not complained about either of these large trailers, which, according to the Balhorns, "forecloses summary judgment because of the uncertainty about how to define a building or structure under the terms of the deed."

We do not agree that these facts demonstrate a latent ambiguity in the meaning of "building or other structure" in the grant of easement. The fact that PG&E apparently has not complained about recreational trailers parked in the easement area, while perhaps

raising the question whether or not PG&E considers such trailers to be buildings or structures,[3] does not demonstrate that the grant language is reasonably susceptible to an interpretation different from its ordinary meaning with respect to the Balhorns' storage shed. (See *Wolf v. Superior Court*, *supra*, 114 Cal.App.4th at p. 1351.) There is no latent ambiguity.

C. *Whether the Shed Unreasonably Interfered with PG&E's Easement*

The Balhorns contend that, even if the shed is a building or structure, there is a triable issue of fact as to whether the shed unreasonably interfered with PG&E's easement.

The general rule is that, despite the granting of an easement, the owner of the servient estate may make continued use of the easement area that does not interfere unreasonably with the easement. (*Pasadena v. California-Michigan etc. Co.* (1941) 17 Cal.2d 576, 579 (*Pasadena*); accord, *Scruby v. Vintage Grapevine, Inc.*, *supra*, 37 Cal.App.4th at pp. 702-703.) Whether a particular use of the land by the servient owner is an unreasonable interference is a question of fact for the jury. (*Ibid*.)

In the present case, the Balhorns argue that the grant of summary judgment in PG&E's favor was erroneous because it remained necessary for a trier of fact to determine whether the shed unreasonably interfered with PG&E's easement. We disagree. Such an analysis is unnecessary here because construction of any building or structure, including the shed in question, was *expressly prohibited* in the grant of easement. In other words, the deed in question demonstrates, as a matter of law, that construction of any building or other structure would constitute an unreasonable interference with the easement.

In *Pacific Gas & Elec. Co. v. Minnette* (1953) 115 Cal.App.2d 698 (*Minnette*), the trial court had found that the appellants' large concrete block building was dangerously

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[3] In *Hacienda, supra,* 45 Cal.App.3d 519, the court declined to decide whether a "travel trailer, as distinguished from a mobile home, which is temporarily placed upon the easement by transients, is a building or structure, or [whether] such use would be inconsistent with the full enjoyment of PG&E's easement." (*Id*. at p. 527, fn. 1.)

close to PG&E's power lines. The appellate court observed: "Appellants contend there is no support for the [trial] court's finding that their building obstructed [PG&E] in the use of and passage over its rights of way and in the maintenance of its power lines. But [PG&E's] rights included the right to have the land embraced in its rights of way kept free of buildings. *It requires no testimony to show that putting a building where appellants put theirs is an obstruction to* [*PG&E's*] *use and an encroachment upon* [*PG&E's*] *rights*. Certainly passage over the land embraced within the rights of way would not be as free with the building there as if it were not there. Equally certain is it that the dangerous proximity of building and wires is an obstruction to use." (Id. at p. 706, italics added.)

In *Hacienda, supra*, 45 Cal.App.3d 519, Division Three of this District found that there was sufficient evidence to support the trial court's findings that the appellant's intended use of the easement area as part of a mobile home park would unreasonably interfere with PG&E's easement and obstruct its right of way, and that such use would be inconsistent with the rights granted under the easement. (*Id*. at p. 529.) As the court stated: "Injunction here was appropriate under either restriction set forth in the grant. Since, however, the terms of the easement expressly prohibit Hacienda's intended use, we shall not dwell further on the propriety of the court's finding that such use would be inconsistent with the full enjoyment of the easement." (*Ibid*.)

Both *Minnette* and *Hacienda* involved appeals after trial. It was therefore to be expected that the appellate court would review, or at least comment upon, the trial court's factual findings regarding unreasonable interference. In each case, however, the appellate court held that the grant deed's express prohibition against construction of buildings in the easement area required a finding in PG&E's favor, regardless of whether the trial court also found an unreasonable interference with PG&E's easement. (*Hacienda*, *supra*, 45 Cal.App.3d at p. 529; *Minnette*, *supra*, 115 Cal.App.2d at p. 706.)

In *City of Los Angeles v. Igna* (1962) 208 Cal.App.2d 338, 341-342 (*Igna*), upon which the trial court in this case relied, the city owned an exclusive easement for power lines and the servient owner had placed many obstructions, both permanent and

impermanent, in the easement area. The appellate court found that the trial court's judgment, in which it had ruled that the owner of the servient estate had no rights in the property within the easement area except as reserved in the deed granting the easement, was too broad. This was because, "generally, the servient owner has the right to use the land in any way not inconsistent with the rights granted under the easement or in such way as not to encroach upon or interfere with the means and facilities which the owner of the easement may lawfully use." (*Id*. at p. 341.)

The appellate court therefore modified the judgment "so as to exclude only those uses by the servient owner which are shown to be inconsistent with the rights granted under the easement or which interfere with those rights." (*Igna*, *supra*, 208 Cal.App.2d at p. 342.) The judgment, as modified read: " 'Defendant Igna has the right to use said property in any way which does not interfere with plaintiffs' use of said property as set forth in the deeds . . . ; *provided, however, that defendant Igna may not place or maintain on said premises any building, or structure*, material or explosive, except nonflammable fences." (*Id.* at p. 342, italics added.) Thus, even after it was modified to permit all uses of the property not reserved in the deed, the judgment still precluded Igna from maintaining, inter alia, any buildings on the property, pursuant to the express terms of the easement.[4]

The Balhorns rely on *City of Los Angeles v. Howard* (1966) 244 Cal.App.2d 538, 546 (*Howard*), in which the city had an express easement for power lines and also had a "secondary and purely implied" easement to use the surface of the easement area. In affirming the trier of fact's finding that the parking of automobiles in the easement area did not constitute an unreasonable interference with any rights of the city, the appellate court distinguished *Igna* on various grounds, most notably on the ground that "the grant of easement in *Igna* was extensive, detailed and broad, including 'the right and easement

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[4] That the easement granted in *Igna* was exclusive, and the easement in this case is not, is irrelevant to the issue addressed here: whether certain uses of the easement area expressly prohibited in the grant deed may nonetheless be undertaken if such uses are found not to unreasonably interfere with the easement.

for roads, ingress, egress and other convenient purposes needed or desired at any time,' together with the right to 'clear and keep said real property free from explosives, buildings, structures, brush and natural wood growth, and inflammable materials. . . .' " (*Howard*, at p. 544, quoting *Igna*, *supra*, 208 Cal.App.2d at p. 340.)

As in *Igna*, the express prohibition contained in the easement grant deed in this case plainly distinguishes it from *Howard*, in which the surface easement in question was purely implied. As PG&E states in its brief, "[w]hat underlies both *Igna* and *Howard* . . . is that in each case the court looked first to the text of the respective easement grant deed before determining whether additional inquiry was indicated, and in neither case did the court reach a conclusion that was inconsistent with the express easement provisions."

Nor do we find helpful *Pasadena*, *supra*, 17 Cal.2d 576, also relied on by the Balhorns for the proposition that whether a particular use of the land by the servient owner is an unreasonable interference is always a question of fact. (See also *Dierssen v. McCormack* (1938) 28 Cal.App.2d 164, 170-171.) Unlike the present case, *Pasadena* did not involve an owner of the servient estate using the property in a way expressly prohibited in the easement grant deed. Instead, the city claimed that where an easement is of a defined width and location, the easement holder has the right to occupy it to the full width if it ever so desires, and any other use should therefore be held unreasonable interference as a matter of law. (*Pasadena,* at p. 580.) In rejecting this argument, our Supreme Court explained that "with such an easement the extent of the burden which the parties intend to impose upon the servient tenement is not definitely fixed merely by a specification of width and location." (*Id*. at p. 581.) The court further observed, however, "[i]t is, of course, possible to draft an instrument which would fully define both the location and the burden of the easement, or which would make the easement exclusive. But the very general language used in the instrument under consideration here cannot be given any such effect." (*Ibid*.) The situation addressed in *Pasadena* is thus quite distinct from the present one.

In conclusion, because there are no triable issues of material fact, the trial court properly granted summary judgment in favor of PG&E. (See Code Civ. Proc., § 437c, subd. (c); (*Aguilar v. Atlantic Richfield Co*., *supra*, 25 Cal.4th at p. 843.)

*DISPOSITION*

The judgment is affirmed. Costs on appeal are awarded to respondent PG&E.

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Kline, P.J.

We concur:

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Haerle, J.

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Lambden, J.